

portions of the incumbent's service area. Disaggregation may alleviate some concerns regarding cream skimming.⁷⁶ However, an incumbent's service area may include wire centers with highly variable population densities, which makes disaggregation a less viable alternative for reducing cream skimming opportunities. In areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC also will conduct a cream skimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against the population density of the wire centers in the study area in which the ETC applicant does not seek designation. After performing this analysis, the FCC will deny designation if it concludes that the potential for cream skimming is high and contrary to the public interest. The FCC also noted that it would retain the procedures adopted pursuant to the Joint Board recommendations to consider three factors enumerated above when reviewing a request for designation as an ETC for an area that differs from a rural LEC's entire study area.⁷⁷

The Joint Board advised the FCC to consider whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.⁷⁸ As a wireless carrier, NEP is restricted to providing service to those areas where it is licensed through its partition from T-Mobile. As evidenced herein, NEP is not picking and choosing the lowest cost exchanges. NEP has based its ETC request based on its licensed service area and proposes to serve this area with the exception of those wire centers that NEP only partially serves pursuant to the FCC's *Highland Cellular Order*. As of May

⁷⁶ *Id.* ¶ 51.

⁷⁷ *Id.* ¶ 73.

⁷⁸ *Id.* ¶¶ 156, 172.

2002, rural ILECs had the opportunity to select among three paths adopted in the *Fourteenth Report and Order* for disaggregation and targeting of high-cost support below the study area level.⁷⁹ Although disaggregation does not alone alleviate concerns regarding cream skimming, such concerns may be lessened when a rural carrier has disaggregated its support. According to the Universal Service Administration Company website, Frontier and Verizon North have disaggregated their costs, thus, lessening the concerns of rural cream skimming.

Next, the Joint Board urged the Commission to consider the rural carrier's special status under the Act.⁸⁰ In deciding whether to award ETC status to NEP, the Commission will weigh numerous factors to determine how the public interest is affected by an award of ETC status pursuant to Section 214(e)(2) of the Act. Congress mandated this public interest analysis in order to protect the special status of rural carriers in the same way it established considerations for rural carriers with regard to interconnection, unbundling, and resale requirements. Accordingly, if the Commission finds that NEP's ETC designation is in the public interest, it has duly recognized the special status of Frontier and Verizon North for purposes of determining whether NEP's service area designation should be adopted for Federal universal service funding purposes.

Last, the Joint Board recommended that the FCC consider the administrative burden a rural LEC would face by calculating its cost on a basis other than its entire study area.⁸¹ In the instant case, NEP's request to define its service area along boundaries that differ from the study area boundaries of Frontier and Verizon North is made solely for

⁷⁹ See *Fourteenth Report and Order*, 16 FCC Rcd 11294, 11302 (2001).

⁸⁰ *Recommended Decision* ¶¶ 172-174.

⁸¹ *Recommended Decision* ¶ 174.

the purpose of ETC designation. NEP requests that the FCC redefine the Frontier and Verizon North study areas to include the wire centers listed in Exhibit F. Defining the service area in this manner will not impact the way Frontier or Verizon North calculate their costs. It is solely to determine the geographical area in which NEP is to be designated as an ETC. Redefining the Frontier and Verizon North's rural study areas will not impose any additional burdens on Frontier or Verizon North. Accordingly, NEP respectfully requests that the FCC designate it as an ETC throughout the proposed ETC service area.⁸²

VII. Certifications

A. Annual Certifications and Reporting Requirements

In its *ETC Order*, the FCC modified its annual reporting requirements.⁸³ To ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes,⁸⁴ the FCC now requires each ETC over which it has jurisdiction to submit annually certain information regarding its network and its use of universal service funds. In compliance with these new reporting requirements, NEP will submit on an annual basis:

- (1) a progress report on NEP's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation

⁸² See attached Exhibit A.

⁸³ *ETC Order* ¶ 73.

⁸⁴ A copy of NEP's annual certification pursuant to Sections 54.313 & 54.314 is attached hereto as Exhibit H.

regarding any network improvement targets that have not been fulfilled;

- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility;⁸⁵
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year and how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines;
- (5) a certification that the ETC is complying with applicable service quality standards and consumer protection rules;
- (6) a certification that the ETC is able to function in emergency situations;
- (7) a certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) a certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

⁸⁵ See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24 (2004).

B. High-Cost Certification

Under Sections 54.313 and 54.314 of the FCC's Rules, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the FCC and the USAC as to their compliance with Section 254(e) of the Telecommunications Act of 1996.⁸⁶ As explained above, the PA PUC does not intend to exercise jurisdiction at this time to consider NEP's ETC petition. Therefore, in accordance with Sections 54.313(b) and 54.314(b), NEP has submitted its high-cost certification with the FCC and USAC.⁸⁷ NEP respectfully requests that the Commission issue a finding that NEP has met the high-cost certification requirement and that NEP is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.

C. Anti-drug Abuse Certification

NEP certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.⁸⁸

VIII. Conclusion

NEP requests that, pursuant to Commission precedent, the FCC grant NEP's ETC Petition and allow it to qualify for Federal high-cost universal service support. Because NEP meets the requirements of Sections 254 and 214 of the Act, as well as the Commission's Rules implementing the Act, and NEP's ETC application is consistent

⁸⁶ 47 C.F.R. §§ 54.313 & 54.314.

⁸⁷ A copy of this certification is attached hereto as Exhibit H.

⁸⁸ See attached Exhibit I.

with the public interest, convenience, and necessity, the FCC should grant NEP ETC status and allow it to qualify for universal service support within its proposed service area. NEP also submits that an expedited grant of this application is in the public interest, convenience, and necessity and consistent with Sections 214 and 254 of the Act.

Respectfully submitted,

NEP CELLCORP, INC.

By:



Caressa D. Bennet
Rebecca L. Murphy
Bennet & Bennet, PLLC

Its Attorneys

June 7, 2007

**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER
REQUESTED ON BEHALF OF NEP**



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

February 26, 2007

Rebecca L. Murphy, Esquire
Bennet & Bennet, PLLC
10 G. Street NE, Seventh Floor
Washington, DC 20002

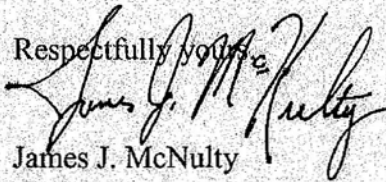
RE: *NEP Cellcorp, Inc., initial inquiry on Commission exercise of jurisdiction to designate wireless carriers as ETCs pursuant to Section 214(e) of TA -96*

Your letter dated January 11, 2007, consistent with the direction of the Federal Communications Commission (FCC), provides the state commission the initial opportunity to assert jurisdiction to designate NEP Cellcorp, Inc. (NEP) as an "eligible telecommunications carrier" (ETC) in Pennsylvania.

Please be advised that, while the Commission has not relinquished any part of its jurisdiction pursuant to 47 U.S.C. §2214(e) and 47 C.F.R. §§54.201, *et seq.*, to designate ETCs, the Commission does not intend to exercise jurisdiction at this time to consider NEP's petition.

Accordingly, NEP should seek ETC designation at the federal level. Any inquiries on this matter may be addressed to Elizabeth A. Lion Januzzi, Assistant Counsel, at (717) 772-0696.

Respectfully yours,


James J. McNulty
Secretary

cc: Elizabeth Lion Januzzi
Assistant Counsel

**Declaration of Tim Sterns
Supported Services**

I, Tim Sterns, do hereby declare under penalty of perjury as follows:

1. I am the Vice President of Operations of NEP and authorized representative for NEP Cellcorp, Inc. ("NEP") in charge of NEP's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania ("Application"). This affidavit is filed in support of the Application.
2. NEP is a small A block licensee providing broadband personal communications service ("PCS") in rural northeast Pennsylvania. NEP has partitioned a portion of T-Mobile's Station WQEW881, MTA 001 New York. Pursuant to the partition, NEP provides service in Susquehanna County with 10 MHz of spectrum based in New York and in Northern Lackawanna and Northern Wayne counties with 20 MHz of spectrum based in Scranton, PA.
3. As a carrier not subject to state commission jurisdiction in the Commonwealth of Pennsylvania, NEP is seeking designation as an ETC under Section 214(e)(6).
4. NEP meets the requirements for ETC designation as explained herein.
5. NEP is a "common carrier" for purposes of obtaining ETC designation pursuant to 47 U.S.C. § 214(e)(1). Section 20.9(a)(7) of the Commission's Rules provides that cellular service is a common carrier service.
6. NEP currently offers and is able to provide within its licensed service area the services and functionalities identified in 47 CFR § 54.101(a) as more fully described below:
 - a. Voice-grade Access to the Public Switched Telephone Network. NEP meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with NE PAT and T-Mobile and soon, three other telephone companies, all of NEP's customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.
 - b. Local Usage. Beyond providing access to the public switched network, an ETC must include local usage as part of a universal service offering. The FCC has not yet quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. NEP will meet the local usage requirements by including a variety of local usage plans as part of a universal service offering. NEP's service includes local usage that allows customers to originate and terminate calls within its local calling area without incurring toll charges.